

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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| TALECRIS BIOTHERAPEUTICS, INC. and |) | |
| BAYER HEALTHCARE LLC, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | C. A. No. 05-349-GMS |
| v. |) | |
| |) | JURY TRIAL DEMANDED |
| BAXTER INTERNATIONAL INC. and |) | |
| BAXTER HEALTHCARE CORPORATION, |) | PUBLIC VERSION |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |
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| |) | |
| |) | |
| |) | |
| BAXTER HEALTHCARE CORPORATION, |) | |
| |) | |
| Counterclaimant, |) | |
| |) | |
| v. |) | |
| |) | |
| TALECRIS BIOTHERAPEUTICS, INC. and |) | |
| BAYER HEALTHCARE LLC, |) | |
| |) | |
| Counterdefendants. |) | |

**DECLARATION OF ANNE M. ROGASKI IN SUPPORT OF DEFENDANT
BAXTER INTERNATIONAL INC. AND DEFENDANT/COUNTERCLAIMANT
BAXTER HEALTHCARE CORPORATION'S CLAIM CONSTRUCTION BRIEF**

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Dated: October 27, 2006
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**DECLARATION OF ANNE M. ROGASKI IN SUPPORT OF DEFENDANT
BAXTER INTERNATIONAL INC. AND DEFENDANT/COUNTERCLAIMANT
BAXTER HEALTHCARE CORPORATION'S CLAIM CONSTRUCTION BRIEF**

I, Anne M. Rogaski, declare:

1. I am a partner at the law firm of Townsend and Townsend and Crew LLP and one of the counsel of record for Defendant Baxter International Inc. and Defendant/Counterclaimant Baxter Healthcare Corporation (collectively "Baxter"). I make this declaration of my personal knowledge.

2. Attached hereto as Exhibit 1 is a Glossary of Terms to assist the court in understanding the terms used in the technical background portion of Defendants' Opening Claim Construction Brief.

3. A true and correct copy of the patent-in-suit, U.S. Patent Number 6,686,191 (Alonso), is attached hereto as Exhibit 2.

4. A true and correct copy of Rousell and McCue "Antibody Purification from Plasma," in BLOOD SEPARATION AND PLASMA FRACTIONATION (Ed., J.R. Harris, 1991) is attached hereto as Exhibit 3.

5. A true and correct copy of U.S. Patent Number 5,256,771 (Tsay) is attached hereto as Exhibit 4.

6. A true and correct copy of a historical timeline from the New York Blood Center website, http://live.nybloodcenter.org/files/Media/32/mediumFilename/NYBC_Decades.pdf, is attached hereto as Exhibit 5.

7. A true and correct copy of U.S. Patent Number 4,540,573 (Neurath) is attached hereto as Exhibit 6.

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9. A true and correct copy of Horowitz *et al.*, "Inactivation of viruses in labile blood derivatives," *Transfusion* 25(6):516-522 (1985) is attached hereto as Exhibit 8.

10. A true and correct copy of Mitra *et al.*, "Elimination of infectious retroviruses during preparation of immunoglobulins," *Transfusion*, 26(4):394-397 (1986) is attached hereto as Exhibit 9.

11. A true and correct copy of Louie *et al.*, "Inactivation of Hepatitis C Virus in Low pH Intravenous Immunoglobulin," *Biologicals* 22:13-19 (1994) is attached hereto as Exhibit 10.

12. A true and correct copy of U.S. Patent Number 4,762,714 (Mitra) is attached hereto as Exhibit 11.

13. A true and correct copy of Barandun *et al.*, "Intravenous Administration of Human γ -Globulin," *Vox Sang.* 7:157-174 (1962) is attached hereto as Exhibit 12.

14. A true and correct copy of Prince *et al.*, "Failure of a human immunodeficiency virus (HIV) immune globulin to protect chimpanzees against experimental challenge with HIV," *Proc. Nat'l. Acad. Sci. USA* 85:6944-6948 (Sept. 1988) is attached hereto as Exhibit 13.

15. A true and correct copy of Ng *et al.*, "Process-Scale Purification of Immunoglobulin M Concentrate," *Vox Sang.* 65:81-86 (1993) is attached hereto as Exhibit 14.

16. A true and correct copy of Eriksson *et al.*, "Virus validation of plasma-derived products produced by Pharmacia, with particular reference to immunoglobulins," *Blood Coagulation and Fibrinolysis* 5(3):S37-S44 is attached hereto as Exhibit 15.

17. A true and correct copy of EP 0 525 502 A1 (Gehring) is attached hereto as Exhibit 16.

18. A true and correct copy of an Octagam product brochure, dated February 1995, is attached hereto as Exhibit 17.

19. A true and correct copy of U.S. Patent Number 5,410,025 (Möller) is attached hereto as Exhibit 18.

20. A true and correct copy of Miekka and Gozze, "Anticomplementary Activity of Human Immunoglobulin G," *Vox Sang.* 29:101-123 (1975) is attached hereto as Exhibit 19.

21. A true and correct copy of Chapter 14 in Janis Kuby, IMMUNOLOGY (W.H. Freeman and Company, 1997) is attached hereto as Exhibit 20.

22. A true and correct copy of Chapter 4 in Kabat and Mayer, EXPERIMENTAL IMMUNOCHEMISTRY (Charles Thomas, 1971) is attached hereto as Exhibit 21.

23. A true and correct copy of Törmä *et al.*, "Microtiter plate assay for measuring the anticomplementary activity of immunoglobulins," *J. of Immunological Methods* 164:101-107 (1993) is attached hereto as Exhibit 22.

24. A true and correct copy of Rousell *et al.*, "Anitcomplementary Activity and the Safety of Intravenous Immunoglobulin," *Clin. Therapeutics* 11(1):143-150 (1989) is attached hereto as Exhibit 23.

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REDACTED

27. A true and correct copy of the patent application submitted by Bayer AG to the European Patent Office (BXTR067923-BXTR067945) is attached hereto as Exhibit 26.

28. A true and correct copy of an amended set of claims submitted by Bayer AG to the European Patent Office on February 21, 2002 (BXTR067992-BXTR067994) is attached hereto as Exhibit 27.

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REDACTED

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 26th day of October, 2006 at Palo Alto, California.



Anne M. Rogaski

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CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on November 3, 2006, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

BY HAND DELIVERY AND E-MAIL

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I hereby certify that on November 3, 2006 I have sent by E-mail and Federal Express the foregoing documents to the following non-registered participants:

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